

Edward J. Maney, Trustee
P.O. Box 10434
Phoenix, Arizona 85064
Telephone (602) 277-3776
ejm@maney13trustee.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	CHAPTER 13 PROCEEDINGS
)	
FRED F. ESCOBEDO,)	CASE NO. 11-08189-PHX-RTB
JULIA P. ESCOBEDO,)	
)	TRUSTEE'S EVALUATION AND
)	RECOMMENDATION(S) REPORT WITH
)	NOTICE OF POTENTIAL DISMISSAL IF
)	CONDITIONS ARE NOT SATISFIED
)	
)	
(Debtor(s)))	RE: CHAPTER 13 PLAN

Edward J. Maney, Trustee, has analyzed the Debtors original Chapter 13 Plan and supporting documents and submits the following evaluation and recommendation(s):

General requirements:

- a. Due to the possibility of errors on the claims docket, it is the attorney's responsibility to review all proofs of claim filed with the Court and resolve any discrepancies between the claims and the Plan prior to submitting any proposed Order Confirming Plan to the Trustee.
- b. Requests by the Trustee for documents and information are not superseded by the filing of an amended plan or motion for moratorium.
- c. The Trustee will object to any reduction in the Plan duration or payout in a proposed Order Confirming Plan unless an amended or modified plan is filed and noticed out.
- d. The Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order shall not constitute an informal proof of claim for any creditor."
- e. The Trustee requires that any proposed Order Confirming Plan state: "Debtor is instructed to remit all payments on or before the stated due date each month. Debtor is advised that when payments are remitted late, additional interest may accrue on secured debts, which may result in a funding shortfall at the end of the Plan term. Any funding shortfall must be cured before the Case can be discharged. This requirement is effective regardless of Plan payments suspensions, waivers or moratoriums, and must be included in any Plan Confirmation Orders."
- f. At the time of confirmation, the Trustee will require the Debtors to certify that they are current on all required tax filings and any domestic support orders.

- g. At the time of confirmation, the debtor(s) are required to certify, via language in the Order Confirming, that they are current on all payments that have come due on any Domestic Support Orders since the filing of their case and that they are current on all required tax return filings [pursuant to 11 U.S.C. §1308].

Specific Recommendations:

1. Based on prior performance, the Trustee conditionally objects to the fees requested by counsel for the debtors(s). The Trustee will withdraw the conditional objection upon confirmation of the debtor(s) plan with the following exceptions. If the debtor(s) attorney fails to file all the required statements and schedules within the time set by the Code and any extensions granted by the Court, the Trustee will request the Court approve a \$750 reduction in attorney fees requested by counsel. The Trustee will request a further \$750 reduction in attorney fees if counsel for the debtor(s) fail to timely respond the Trustee Recommendation or submit a stipulated order confirming case within the time set by the Trustee. The Trustee will have the conditional objection set for hearing if counsel for the debtor(s) fails to agree to the fee reductions. The conditional objection will not delay confirmation of debtor(s) case. The Trustee will hold funds for counsel until the Court rules on the Trustee's objection. All other monies will be disbursed in due course.
2. JPMorgan Chase [2nd mortgage] and M&I Marshall & ILsley Bank [business loan] have filed objections to the Plan. The Trustee requires the objections be resolved prior to confirmation of the Plan.
3. The Proofs of Claim filed by Litton Loan Servicing [1st mortgage], Chase Auto Finance [2006 Ford] and Ford Motor Credit [2008 Ford] differ substantially by classification and/or amount from these creditors' treatment under the Plan. To resolve this discrepancy, the Trustee requires either; a) Debtor object to the Proof of Claim; b) the creditor sign-off on an Order Confirming; c) the Order Confirming be altered to pay the creditor pursuant to the Proof of Claim including payment of the contract rate of interest; or d) Debtor file an Amended Plan to provide for the creditor's claim as shown by the Proof of Claim.
4. The Trustee requires the debtor file an Attachment to Schedule J to provide a breakdown of business expenses listed on Schedule J as a lump-sum of \$18,404 per month.
5. The 9th circuit BAP has issued a decision which restates our position that business expenses are not deducted from business income on Line 3 of Form 22C. The entire amount of business income is included for purposes of over/under-median and applicable commitment period determination. The case cite is *In re Wiegand*, 386 BR 238 (9th Cir BAP 2008). Form B22C to be revised accordingly.
6. The Debtor must file Monthly Business Operating Statements with the Court with a copy to the Trustee for the months of May 2011. The Debtor should note that this is a monthly filing requirement, with statements to be filed on or before the 15th of each month, covering self-employment income and expenses for the month prior.

In summary, Plan can be confirmed subject to the condition(s) noted above, adequate funding, and timely filed Stipulated Order Confirming, and Court approval. General unsecured creditors (including secured creditors with unsecured deficiency balances) will be paid through the Trustee approximately \$16,109 or an estimated 9% of related debts, subject to timely filed and allowed claims. Chapter 7 reconciliation requirement will be met given debtors' scheduled zero equity in non-exempt property at petition date. **You are hereby advised that the Trustee may lodge an Order of Dismissal should Debtor fail to resolve item(s) #4, #5, #6 above and submit a Stipulated Order Confirming to the Trustee for review and signature or request a hearing within 30 days from the date of the mailing of this Trustee's Recommendation.**

Dated: [see electronic signature]

Edward J. Maney, Trustee

Copies of the forgoing
mailed on [see electronic signature],
to the following:

Fred Escobedo
Julia Escobedo
6510 W. Orange Dr.
Glendale, AZ 85301
Debtors

Amanda Elizabeth Nelson, Esq.
20 E. Thomas Road
Suite #2400
Phoenix, Arizona 85012
Debtors counsel

By: _____
Trustee's Clerk